



FEDERAL ELECTION COMMISSION

WASHINGTON, D.C. 20463

MAY 24 2012

Sarah E. Troupis, Esq.
Troupis Law Office, LLC
8500 Greenway Blvd.
Suite 200
Middleton, WI 53562

RE: MUR 6509
Friends of Herman Cain,
Mark Block, Treasurer

Dear Ms. Troupis:

On November 9, 2011 the Federal Election Commission notified your clients, Friends of Herman Cain and Mark Block, in his official capacity as treasurer, (the "Committee") of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act"). A copy of the complaint was forwarded to your clients at that time.

Upon further review of the allegations contained in the complaint, and information supplied by your clients, the Commission, on May 10, 2012, found that there is reason to believe the Committee violated 2 U.S.C. §§ 441b(a) and 434(b), and 11 C.F.R. §§ 104.3(a)(4), 104.3(d) and 114.2, provisions of the Act and the Commission's regulations. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause

150442380541

Enclosures
Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3
4 **RESPONDENTS:** Friends of Herman Cain, Inc. MUR: 6509
5 and Mark Block, in his official capacity as Treasurer
6

7 **I. GENERATION OF MATTER**

8 This matter was generated by a complaint filed with the Federal Election Commission by
9 Citizens for Responsibility and Ethics in Washington. *See* 2 U.S.C. § 437g(a)(1).

10 **II. BACKGROUND**

11 A Complaint filed by Citizens for Responsibility and Ethics in Washington ("CREW")
12 alleges that Prosperity USA, Inc. ("PUSA"), a non-profit corporation under Section 501(c)(3) of
13 the Internal Revenue Code, made unreported corporate in-kind contributions to Friends of
14 Herman Cain, Inc., the authorized committee of presidential candidate Herman Cain, by paying
15 expenses related to Cain's presidential exploratory activity before he declared his candidacy for
16 the Republican presidential nomination, in violation of the Federal Election Campaign Act of
17 1971, as amended (the "Act"). Specifically, the Complaint asserts that PUSA paid for travel
18 expenses for Cain and his staff and iPads for campaign staff in violation of 2 U.S.C. § 441b(a).
19 The Complaint includes a purported internal PUSA ledger listing some of those expenses.
20 The Complaint further alleges that Friends of Herman Cain, Inc. and its treasurer Mark J. Block
21 (the "Cain Committee"), failed to report the advances as debts in violation of
22 2 U.S.C. § 434(b)(8).

23 The response filed by the Cain Committee acknowledges that PUSA may have funded
24 certain Cain Committee activities. It disputes, however, that every expense listed in the ledger

1 was campaign related and asserts that some were incurred before Cain became a candidate or
2 began "testing the waters" for his candidacy.

3 The Commission finds reason to believe that the Cain Committee accepted prohibited
4 corporate contributions in violation of 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2.

5 The Commission further finds reason to believe that the Cain Committee, violated 2 U.S.C.
6 § 434(b) and 11 C.F.R. §§ 104.3(a)(4), 104.3(d) by failing to report these amounts as in-kind
7 contributions or debts owed to PUSA.

8 **III. FACTS**

9 Mark Block and Linda Hansen are Wisconsin-based political consultants who founded
10 and ran PUSA. The entity is incorporated as a Wisconsin not-for-profit corporation, and its
11 Articles of Incorporation indicate that it is operated as a Section 501(c)(3) public interest
12 organization under the Internal Revenue Code. *See* Complaint, Ex. 1.¹ PUSA is reportedly
13 connected to Americans for Prosperity, a non-profit "that helped organize the tea party
14 movement in Wisconsin and elsewhere." Complaint, Ex. 3. Mark Block is the president of
15 PUSA.

16 The Cain Committee is the principal campaign committee of Herman Cain, then a
17 candidate for the Republican presidential nomination. Cain declared his candidacy for president
18 on May 3, 2011, and filed a statement of organization for the Cain Committee on the same day.
19 In its first quarterly disclosure report, filed on July 20, 2011, the Cain Committee reported that it

¹ Block established a Wisconsin non-profit corporation on April 10, 2010, using the name America's Prosperity Network, Inc. He changed the name of the corporation to Prosperity USA, Inc. by filing an amendment to the Articles of Incorporation on August 30, 2010. *See* Complaint, Exs. 1, 2.

1 incurred "testing the waters" activity beginning December 29, 2010.² Block is the treasurer of
2 the Cain Committee and served as chief of staff for the political campaign. According to the
3 Complaint, "at all [relevant] times" he simultaneously served as president of PUSA. Complaint
4 at 3 & Ex. 3. Linda Hansen is reportedly the deputy chief of staff for Cain. Complaint, Ex. 3.

5 The Complaint alleges violations of the Act premised on internal PUSA ledgers made
6 public in the *Milwaukee Journal Sentinel*. The Complaint provided selected pages of those
7 ledgers, which appear to be part of an internal PUSA accounting system, containing "Profit &
8 Loss" statements and a "balance sheet." Complaint, Ex. 4. The ledgers also contain a list of
9 accounts receivable as of February 10, 2011, including amounts putatively "Due from FOH:"

10 **Table 1: PUSA Accounts Receivable**

11 **"Due from FOH" as of Feb. 10, 2011**

12

Description	Amount
Atlanta Invoice 002	\$14,779.25
Hill Aircraft Invoice 002	\$16,669.94
Travel & Meetings IA, LA, Las Vegas, Houston-Dallas Invoice #001	\$5,900.32
1/4/2011 Invoice for Ipads	\$3,764.14
TOTAL	\$41,113.65³

13

² According to press reports, Cain announced the suspension of his candidacy for the Republican presidential nomination on December 3, 2011.

³ The February 10, 2011 ledger does not identify the dates on which travel expenses were incurred, but those expenses are listed among others that incurred between December 28, 2010 and January 7, 2011. The accounts receivable ledger includes three additional entries totaling \$252.72, allegedly incurred by Block but "due from [FOH]," containing an annotation, "Mark may repay." Complaint, Ex. 4.

1 On October 30, 2011, the *Milwaukee Journal Sentinel* reported that internal PUSA
2 financial records reflected a debt "of about \$40,000" owed to PUSA from the Cain Committee.
3 See Daniel Bice, *State Firm's Cash to Herman Cain May Breach Federal Campaign, Tax Laws*,
4 MILWAUKEE J. SENTINEL (Oct. 30, 2011) (attached to the Complaint as Ex. 3) ("the Bice
5 Article"). The Bice Article stated that PUSA "helped [Cain] get his fledgling campaign off the
6 ground by originally footing the bills for tens of thousands of dollars of expenses" *Id.*

7 Based on these ledger entries and the Bice Article, the Complaint alleges that PUSA
8 knowingly and willfully made prohibited corporate contributions on behalf of the Cain
9 Committee, which the Cain Committee accepted and failed to report. Complaint at 4-5.

10 In its Response, the Cain Committee addresses most of the items listed among the
11 putative accounts receivable and acknowledges the accuracy of several of those alleged Cain
12 Committee debts. As to certain other entries, the Cain Committee asserts that the amounts were
13 PUSA obligations, not advances on behalf of the Cain Committee. Concerning the \$14,779.25
14 "Atlanta invoice," see Table 1, *supra*, the Cain Committee admits the fact of a
15 December 3-4, 2010 meeting in Atlanta "to discuss the results of the 2010 elections,"
16 Response at 3. And the Response concludes that "upon reviewing the events that took place . . .
17 it might be argued that this meeting . . . might be considered a 'testing-the-waters' event
18 [The Cain Committee] will be amending their reports accordingly, to include these expenses."
19 *Id.* at 3-4. In its recently-filed 2012 April Quarterly, the Cain Committee reported a
20 disbursement to PUSA for \$14,779.25 for "Lodging/Transportation/Meals" made on
21 January 20, 2012. With respect to the other apparent travel-related expenses, however, including
22 the "Hill Aircraft" invoice and expenses related to "Travel & Meetings IA, LA, Las Vegas,

1 Houston-Dallas,” the Response does not contest the expenses but denies they were prohibited
2 contributions because they “appear to be trips made solely for purposes unrelated to either
3 Mr. Cain’s exploratory committee or his candidacy for president. As such, these are not
4 expenses that are attributable to the Cain Committee.” Response at 4. Rather, according to the
5 Response, the identified travel expenses involved “meetings related to Americans for Prosperity,
6 a group which regularly involved Mr. Cain in events, and with which Mr. Block was also
7 involved.” *Id.* at 4 n.1. The Response does not explain why PUSA’s apparent ledger includes
8 those expenses among the debts “Due from FOH.”⁴

9 In addition to travel-related expenses, the Complaint alleges that PUSA paid \$3,764.14
10 for iPads for Cain Committee staff that was unreimbursed and unreported on Cain Committee
11 disclosure reports. The ledger itemized the iPads expense with an entry reading, “Not billed to
12 FOH yet, but due from them.” Complaint, Ex. 4. The ledger further indicated that the amount
13 was invoiced January 4, 2011 and “emailed to Scott, Mark.” *Id.* The Response admits that
14 PUSA paid for iPads used by members of the Cain Committee staff, and neither disputes the
15 value assigned to the iPads nor the allegation that PUSA was not reimbursed:

16 These iPads were used by various individuals who worked at
17 Prosperity USA prior to joining the Cain Committee. These
18 individuals believed that the iPads, which they received as employees
19 of PUSA, were theirs to keep (*i.e.*, the iPads were given to them to
20 keep and were later brought with the individuals when they came to
21 work for the Cain Committee). While this would be allowed under the
22 FEC Rules, the Cain Committee will nonetheless be amending the
23 proper FEC reports to reflect the listed expenses for iPads as expenses
24 of the campaign.

⁴ Filed disclosure reports indicate that, beginning February 2011, the Cain Committee’s sole air travel vendor was Hill Aircraft. From February to November 2011, the Cain Committee made ten payments to Hill Aircraft totaling approximately \$300,000.

1 Response at 3. In its recently-filed 2012 April Quarterly disclosure report, the Cain Committee
2 reported a disbursement to Wisconsin Prosperity Network⁵ for \$3,764.14 for "Office Equipment"
3 made on January 20, 2012.⁶

4 The Cain Committee raises two general arguments as to why the Commission should take
5 no action in the matter. First, it questions the source and veracity of the ledgers, noting that the
6 purported ledgers are identified further as drafts, and for all of these reasons contends they are
7 unreliable. Resp. at 2. Second, the Response argues that the allegations in the Complaint are not
8 adequately specific for the Respondent to understanding "what actions led to a violation."
9 See Resp. at 2.

10 **IV. ANALYSIS**

11 The Act prohibits any corporation from making a contribution to a political committee
12 and similarly prohibits political committees from accepting or receiving such contributions.
13 2 U.S.C. § 441b(a). A "contribution" includes "any gift, subscription, loan, advance, or deposit
14 of money or anything of value made by any person for the purpose of influencing any election
15 for federal office." *Id.* § 431(8)(A)(i). The Commission's regulations provide that "anything of
16 value" includes all in-kind contributions, including the provision of goods or services without

⁵ The Bice Article provides a link to online copies of the incorporation records for Wisconsin Prosperity Network. See Bice Article. Those records reflect that Wisconsin Prosperity Network, like PUSA, is a 501(c)(3) organization and Mark Block is its President. According to the Bice Article, Wisconsin Prosperity Network was intended to function as "an umbrella organization that would spend more than \$6 million a year underwriting a dozen or so other conservative groups." See *id.*

⁶ The Response also states that, although not alleged specifically in the Complaint, the Cain Committee's internal review has shown that furniture purchased by PUSA was passed through common employees to the Cain Committee as the Cain Committee began operations. The Cain Committee states that it "could, in good faith, argue that these [expenses] are not reportable, but to avoid any suggestion of impropriety, will nonetheless amend the necessary report to reflect the value of this furniture." See Resp. at 4. In its April 2012 Quarterly disclosure report, the Cain Committee lists a \$300 disbursement to Wisconsin Prosperity Network made on January 29, 2012, for "office furniture," which likely is the furniture in question.

1 charge or at a charge which is less than the usual and normal charge for such goods or services.

2 11 C.F.R. § 100.52(d)(1). The amount of the in-kind contribution is the difference between the
3 usual and normal charge for the goods or services at the time of the contribution and the amount
4 charged to the political committee. *Id.* The usual and normal charge for goods means the price
5 of those goods in the market from which they ordinarily would have been purchased at the time
6 of the contribution. *Id.* § 100.52(d)(2).

7 The Complaint alleges that the Cain Committee accepted prohibited in-kind contributions
8 from PUSA when it advanced the costs of travel and iPads while Cain was "testing the waters"
9 before he announced his candidacy and designated his authorized committee. Under the
10 Commission's regulations, an individual who has not decided to run for office may "test the
11 waters" by raising and spending funds while he or she is making that decision. *Id.* §§ 100.72,
12 100.131. These funds may be raised and used for the limited purpose of determining whether an
13 individual should become a candidate. *Id.* Only funds permissible under the Act may be used
14 for such activities. *Id.*

15 Section 434(b)(8) of the Act requires committees to disclose the nature and amount of
16 outstanding debts and obligations in their reports. These debts and obligations must be
17 continuously reported until they are extinguished. 11 C.F.R. § 104.11(a). Debts of \$500 or less
18 must be reported no later than 60 days after the obligation is incurred, while debts exceeding
19 \$500 must be reported when incurred. *Id.* § 104.11(b). All political committees are required to
20 file reports of their receipts and disbursements. 2 U.S.C. § 434(a). These reports must itemize
21 all contributions received from contributors that aggregate in excess of \$200 per election cycle.
22 *Id.* § 434(b); 11 C.F.R. § 104.3(a)(4). Any in-kind contribution must also be reported as an
23 expenditure on the same report. 11 C.F.R. §§ 104.3(b), 104.13(a)(2).

1 The Commission concludes that the available information provides an adequate basis for
2 an investigation into whether PUSA funded Cain Committee activities with corporate advances.

3 The documents attached to the Complaint, notably PUSA ledgers itemizing Cain Committee
4 debts to PUSA, support that conclusion, as many of those expenses were apparently incurred
5 during the period that Cain acknowledges he was testing the waters for his candidacy.

6 In addition, the Cain Committee's Response acknowledges both the accuracy of certain expenses
7 identified in the ledgers and that some of those expenses should either have been paid by the
8 Cain Committee itself or disclosed as debts. Ultimately, the Cain Committee reported
9 reimbursing the expenses, albeit over a year after incurring them and after the Complaint was
10 filed.

11 The ledgers attached to the Complaint support a conclusion that PUSA funded Cain
12 Committee expenses. The ledgers identify the expended amounts as receivables "due from
13 FOH." See Table 1, *supra*. These receivables are described in some detail, including the
14 specific amount owed and a description of the good or service provided. Further, the ledgers
15 reflect that the debts would have been known to the Cain Committee: at least one invoice was
16 apparently emailed to Cain Committee staff, and two officials, Mark Block and Linda Hansen,
17 appear to be among the control group both at PUSA and the Cain Committee. In addition, the
18 ledgers list a receivable for at least one vendor used by the Cain Committee during the
19 presidential campaign, Hill Aircraft, further suggesting a connection between the identified
20 travel expenses and the Cain Committee. Finally, the Cain Committee has itself identified
21 furniture that PUSA provided the campaign at no cost. This admission further supports the

1 contention of the complainant that there is reason to believe the Cain Committee owed debts to
2 PUSA that were not reported.

3 In addition, some of the identified expenses were apparently incurred during the period
4 that the Cain Committee acknowledges Cain was testing the waters. According to the Cain
5 Committee's first filed disclosure report, Cain was testing the waters as of December 29, 2010.
6 The ledgers indicate that the iPads were invoiced January 4, 2011, which falls within the testing
7 the waters period. Although the ledgers do not identify dates on which the travel expenses were
8 incurred, they appear among other expenses between December 28, 2010 and January 7, 2011,
9 and accordingly the travel costs were likely incurred during that time as well.⁷

10 Despite the Cain Committee's arguments concerning the authenticity of the ledgers, it
11 acknowledges that some of the identified expenses may have been advances relating to "testing
12 the waters" activities. For instance, the Response acknowledges that during the December 3-4,
13 2010 "Atlanta meeting," Cain contemplated his candidacy, making those related expenses
14 reportable, and it recently reported reimbursing PUSA for the expenses.⁸

15 The Cain Committee challenges the authenticity of the ledgers on the grounds that the
16 ledgers do not indicate who created them or released them to the press. But more to the point, it
17 does not deny the accuracy of the information described in those ledgers. Indeed, it specifically
18 acknowledges the general accuracy of some of that information. For instance, the Response

⁷ The Cain Committee asserts in its Response that some travel expenses relate to Cain's attendance at Americans for Prosperity events in 2010 and were unrelated to his candidacy. The Commission will seek to confirm this claim during its investigation.

⁸ This assertion may also extend the relevant testing the waters period to December 3-4, 2010, from the previously identified December 29, 2010, commencement date.

1 directly addresses the purchases of iPads and the alleged receivable for travel to Atlanta, both
2 itemized on the ledgers. Response at 3-4. In addition, the amount recently reported by the Cain
3 Committee as disbursed to PUSA and Wisconsin Prosperity Network is the exact amount listed
4 in the ledger for the "Atlanta invoice" and the iPads.⁹

5 The Cain Committee also argues that the generalized allegations in the Complaint prevent
6 it from understanding "what actions led to a violation." See Response at 2. The Commission
7 disagrees. The allegations in the Complaint make specific reference to Respondents' acts and to
8 relevant provisions of the Act and regulations. The Complaint clearly states that "by accepting
9 payment of campaign expenses by Prosperity USA," the Cain Committee accepted corporate
10 contributions and that the Cain Committee's failure to report the debt was a violation of
11 reporting requirements. Complaint at 5. The ledgers and other attachments are also readily
12 understandable and provide adequate detail for the Respondents to understand the nature of the
13 claims in the Complaint and formulate a response should they choose to do so – and in fact the
14 Committee did respond. The Complaint and accompanying exhibits present "a clear and concise
15 recitation of the facts which describe a violation" so as to constitute a viable Complaint in
16 compliance with Commission regulation. 11 C.F.R. § 1.11.4.

17 Given the information provided with the Complaint and the Cain Committee's admission
18 in its Response of a number of the relevant facts contained in the Complaint, there is reason to
19 believe that the Cain Committee received corporate contributions from PUSA while Herman
20 Cain was a candidate or while testing the waters for his candidacy. The Cain Committee's
21 recently-filed 2012 April Quarterly report also indicates that the Cain Committee itself regards

⁹ According to the Bice Article, two individuals with apparent knowledge each verified the authenticity of the ledgers before the newspaper published its account of the content of the records. See Complaint, Ex. 3.

MUR 6509
Factual and Legal Analysis
Friends of Herman Cain and Mark Block, as Treasurer

1 these expenses as corporate contributions. Thus, the Commission finds reason to believe that
2 Friends of Herman Cain, Inc., and Mark Block, in his capacity as Treasurer, accepted prohibited
3 corporate contributions in violation of 2 U.S.C. § 441b(a) and 11 C.F.R. § 114.2.
4 The Commission further finds reason to believe that Friends of Herman Cain, Inc., and Mark
5 Block, in his capacity as Treasurer, violated 2 U.S.C. § 434(b) and 11 C.F.R. §§ 104.3(a)(4),
6 104.3(d) by failing to report PUSA's expenditures as in-kind contributions or debts owed to
7 PUSA.¹⁰

¹⁰ The Cain Committee also recently filed amendments to its 2011 October Quarterly and 2011 Year-End reports, but did not disclose any debt owed to PUSA or Wisconsin Prosperity Network.